

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

TechGuru Consultants, Inc., and
Alexander Litz

Plaintiffs,

vs.

Tech Guru LLC.,

Defendant.

Civil Action No.: 1-16-cv-08777-PGG

Judge Paul G. Gardephe

MOTION FOR LEAVE TO FILE UNDER SEAL

Plaintiffs TechGuru Consultants, Inc. (“TGC”) and Alexander Litz (“Litz”) (jointly, “Plaintiffs”) hereby move the Court, pursuant to Federal Rule of Civil Procedure 5.2 (d), Local Civil Rule 5.2(d), and Electronic Case Filing (ECF) Rule 6.8 for an Order permitting Plaintiffs to file Exhibit A (herein Exhibit), the Interim Settlement Agreement (“Agreement”), to the Plaintiff’s Motion to Reopen and Set Aside or Vacate Judgment (Dkt. No. 57) under seal. Pursuant to paragraph 2 and paragraph 4 of the Agreement, Plaintiff will file on the public record a copy of the Exhibit within six days of the filing of the Notice Regarding Sealed Material. Plaintiffs attempted to seek consent from Defendant on August 18, 2020 but Defendant did not provide any response by August 24, 2020.

Plaintiffs request that the Exhibit be filed under seal because it refers to documents or information that this Honorable Court designated “Confidential Information” pursuant to the Agreement. Defendant raised the issue of the Agreement in its opposition (Dkt. No. 61) to Plaintiffs’ Motion to Reopen (Dkt. No. 57).

Defendant failed to abide by the terms outlined in the Agreement's paragraph 2 and 4 which was integral to Plaintiffs' successful Voluntary Dismissal (Dkt. No. 54).

The language of paragraph 2 in the Agreement states:

"[C]ontinuation of Settlement Discussions: This Agreement is made for the explicit purpose of facilitating the Parties' further pursuit of a settlement resolving all of their outstanding issues and disputes on the merits. The parties hereby agree to continue their settlement discussions and to inform one another if at any point they develop a good-faith belief that a settlement is no longer possible".

Read collectively with paragraph 2 above, the confidential language of paragraph 4 in the Agreement was an obligation of both parties to suspend the Trademark Trial and Appeal Board ("TTAB") proceeding for settlement negotiations. Plaintiffs addressed in paragraph 4 a provision regarding an extension of the discovery period before the TTAB and the Defendant's failure to request such extension jointly with the Plaintiffs. Plaintiffs addressed in their reply submission to Defendant's opposition paper that paragraph 4 was included to work towards a settlement in the dispute between the parties, not to suspend or delay the TTAB proceeding (Dkt. No. 64).

Accordingly, Plaintiffs respectfully submits this Motion for an Order permitting to file under seal:

- (1) Exhibit A to the proposed Motion to Reopen and Set Aside or Vacate Judgment.

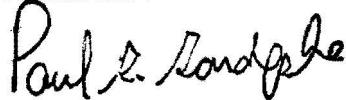
Dated: August 24, 2020

Respectfully submitted,

MEMO ENDORSED

The motion to seal is denied. This Court's Individual Rules provide, "The proposed sealed document must be contemporaneously filed under seal in the ECF system and electronically related to the motion. . . . In general, the parties' consent or the fact that information is subject to a confidentiality agreement between litigants is not, by itself, a valid basis to overcome the presumption in favor of public access to judicial documents." No proposed sealed document was filed in the ECF system. Further, Plaintiff references this Court's having "designated 'Confidential Information' pursuant to the Agreement," but there is no protective order in this case. Plaintiff must correct these deficiencies and explain why sealing is justified under Lugosch v. Pyramid Co. of Onondaga, 435 F.3d 110, 119-20 (2d Cir. 2006).

SO ORDERED.



Paul G. Gardephe
United States District Judge
August 25, 2020

FOR PLAINTIFFS

TechGuru Consultants, Inc., and Alexander Litz

*/s/*David Postolski

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